

1 IN THE UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 In Ref: GMAC MORTGAGE LLC

) Adv Complaint No.

4 Debtor

) Case No.: 12-12032

5 GWENDOLYN B. HAWTHORNE,

6 2377 SCOTT OAKS TRAIL SW

7 MARIETTA, GA 30008

8 Plaintiff,

9 vs.

10 GMAC MORTGAGE LLC,

11 1100 VIRGINIA DRIVE

12 FORT WASHINGTON, PA 19034

13 AND

14 U.S. BANK NATIONAL ASSOCIATION

15 AND

16 GMFS LLC

17 7389 FLORIDA BLVD SUITE 200A

18 BATON ROUGE, LA 70806

19 AND

20 JUDY FABER, VICE PRESIDENT

21 AND

22 BRENDA GUIDRY

23 AND

24 MORTGAGE ELECTRONIC REGISTRATION

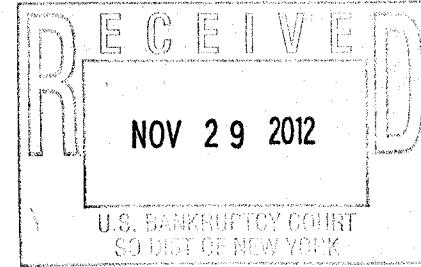
25 SYSTEM INC

26 AND

27 DUANE THOMPSON, ASSISTANT SECRETARY

28 MORTGAGE ELECTRONIC REGISTRATION

29 SYSTEMS INC AS NOMINEE FOR GMFS, LLC



DEBTORS' COMPLAINT TO DETERMINE NATURE AND EXTENT OF LIENS

PURSUANT TO 11 U.S.C. 506(A) - 1

1 RESIDENTIAL FUNDING CORPORATION
2 Defendant

5 DEBTORS' COMPLAINT TO DETERMINE NATURE AND EXTENT OF LIENS

6 PURSUANT TO 11 U.S.C. 506(A)

7 Plaintiff/Creditor Gwendolyn B. Hawthorne, herein bring this adversary
8 complaint to determine the nature and extent of liens that appear to be
9 secured by Plaintiff's principal residence, and Complaint for Violations of
10 the Racketeer Influenced and Corrupt Organizations Act but which are
11 completely unsecured, pursuant to 11 U.S.C. 506(a).

12 I. INTRODUCTION

- 13 1. The protection of individual property rights is a cornerstone of
14 American society and its jurisprudence. These rights are protected by
15 well-established laws that provide the necessary checks and balances to
16 ensure that these rights are not violated.
- 17 2. Ignoring fundamental rights of property ownership, the Defendants and
18 their cohorts engaged in a pattern of racketeering activity in which
19 they routinely and repeatedly prepared perjured affidavits in order to
20 rapidly churn foreclosures of the Plaintiffs' mortgages without the
21 necessary information and documentation.
- 22 3. The perjured affidavit in question were signed by so-called "robo-
23 signers" (Duane Thompson) who often signed hundreds per day and had no
24 personal knowledge of their contents or accuracy. The perjured
25 affidavits/Assignments were submitted to courts and sent through
26 interstate mails and wires, all in furtherance and perpetuation of the
27 fraud. The robo-signers perjured themselves at the Defendants'
28 direction by swearing that they had personal knowledge of information
29 contained in the affidavits that they did not even read.
- 30 4. The Defendants' and their enterprise's activities amounted to a
31 conspiracy to undermine the justice system in foreclosure proceedings.
32 This foreclosure churning apparatus, through its multiple parts,

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PURSUANT TO 11 U.S.C. 506(A) - 2

1 allowed the Defendants to operate the Mortgage Foreclosure Mill
2 Enterprises, throwing families from their homes with callous disregard
3 for the basic protections of the law and established American notions
4 of justice.

5 As set forth below, the Plaintiff are entitled to actual and
6 statutorily-enhanced damages caused by the Defendants' fraudulent
7 activities under the Racketeer Influenced and Corrupt Organizations Act
8 ("RICO"), 18 U.S.C. 1961-68. Plaintiff is entitled to damages for
9 Defendants' violations of the Fair Debt Collection Practices Act
10 ("FDCPA"), 15 U.S.C. 1692.

11 **II PARTIES**

12 6. GMFS LLC is a non-Louisiana limited liability company that is
13 registered as a residential mortgage lender with the Louisiana Office
14 of Financial Institutions. GMFS is engaged in, and its activities
15 affect interstate commerce. At all relevant times, GMFS regularly
16 extended consumer credit payable by written agreement in more than four
17 installments for which a finance charge is imposed, table funded such
18 loans and/or accepted assignment of such loans that had been originated
19 by other lenders.

20
21 **III. JURISDICTION**

22 7. Debtor(s) filed a Chapter 11 case in the above-entitled court on May
23 14, 2012. As such, this Court has jurisdiction over these proceedings
24 pursuant to 28 U.S.C. 1334(a), which provides that the District Court
25 shall have original and exclusive jurisdiction of all cases and
26 proceedings under Title 11 28 U.S.C. 157(a), which in turn authorizes
27 the District Court to refer all Title 11 cases and proceedings to the
28 bankruptcy judges for the district. This matter is a core proceeding
29 pursuant to 28 U.S.C. 157(b)(2)(H). Plaintiff requests a trial by
30 jury.

31
32 **IV. STATEMENT OF FACTS**

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8. Plaintiff Gwendolyn B. Hawthorne is the owner of record, or have an equitable ownership in the real property commonly known as 2377 Scott Oaks Trail SW Marietta, GA 30008. ("the subject property").
9. The value of the property, as shown on Defendant's proof of claims is \$145,821.97. This is evidenced by the recorded Security Deed and fraudulent Assignment which purports to encumber the subject property.
10. Plaintiff attaches a true and correct copy of the following documents to support the above facts: Exhibit A "Security Deed" November 07, 2003, Exhibit B: Assignment of Security Deed dated June 22, 2012.
11. Plaintiff allege that Defendant's purported "lien" is fully unsecured in that the lien having no priority over that of Plaintiff's amount is more than the value of the property at the time of the commencement of the case.
12. Further, Plaintiff allege that for the purpose of 11 U.S.C. 506, the appropriate date of valuation is the date of the commencement of this case while the purpose of valuation is to determine if, upon immediate liquidation at the time of the commencement of the case, there would be any equity in the property such that Defendant would be able to recover any money upon its alleged lien.
13. GMAC Mortgage filed a proof of claim on October 03, 2012. The documents attached to the proof of claim include an Adjustable Rate Note from Defendant GMFS, LLC to Mortgage Electronic Registration Systems, Inc.
14. Upon investigation the Plaintiff has determined the lien on the property in question is backed by Defendant, GMFS LLC.
15. The fraudulent Assignment to RESIDENTIAL FUNDING CORPORATION was signed by Brenda Guidry, A GMFS employee who signed the document as an officer of GMFS. The two endorsements on the note appear to have been executed by other people who have been identified in other cases around the county as people who signed documents indiscriminately with bizarre

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1 "limited signing authorities" associated with Defendant MERS and GMAC
2 Mortgage.

3 16. In the event that the Defendants' lien is not perfected or could
4 be avoided, Accordingly, Plaintiff seeks entry of a judgment that her
5 interest in the property is superior to that of the Defendants pursuant
6 to 11 U.S.C. 544.

7 WHEREFORE, Plaintiff prays as follows:

8 A. That a summons issue and be served on the Defendants, together with a
9 copy of this complaint, and that Defendants be required to answer
10 within the time required by law.

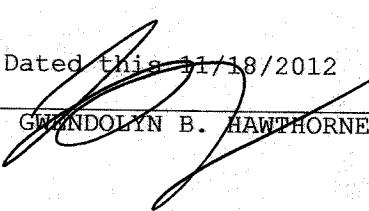
11 B. That upon a hearing of this cause the Court determines the nature and
12 extent of the liens of the Defendants.

13 C. That upon a finding that the lien of the Defendants in the property is
14 not perfected, the Court issue an order finding the interest of the
15 Plaintiff in the property to be superior to that of the Defendants, and
16 allow her modification to go thru as promised by GMAC. Plaintiff
17 continued to request for a Loan Modification but to no avail. GMAC
18 continue to request for the same documents over and over and continued
19 to say that they never received the documents.

20 D. That Plaintiff be awarded her reasonable costs in pursuing this cause.

21 E. That Plaintiff be awarded such further relief as may be warranted by
22 the premise.

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27 Dated this 31/18/2012
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Gwendolyn B. Hawthorne

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